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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,199	08/20/2003	Patricia A. Kelly	42833-0200	5744
21611	7590	01/18/2007	EXAMINER	
SHELL & WILMER LLP 600 ANTON BOULEVARD SUITE 1400 COSTA MESA, CA 92626			DESANTO, MATTHEW F	
		ART UNIT		PAPER NUMBER
				3763
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/18/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/644,199	KELLY ET AL.
	Examiner Matthew F. DeSanto	Art Unit 3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 November 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 and 33-36 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 22-32 and 37 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 1-31, 33-36 are drawn to an invention nonelected without traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 22-32, 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Silver et al. (USPN 6,663,587).

Silver et al. discloses breast cup for use in a breast pump system comprising: a cup of biocompatible material having a first cross-section and an opening at a first end, and a second cross-section and an opening at a second end, the wall thickness of the cup varying from the first end to the second end in a manner that causes a progressive collapse of the cup when a vacuum is drawn at the first end, and the second end of the cup is closed by a human breast and

teat (see figures 9, 10, 13 and entire reference). With regard to claim 37, see figure 16, wherein the first cross section is reference number 784, and the second cross section is the material making up the lumen of the cup.

4. Claims 22-32, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Ford (USPN 5,885,246).

Ford discloses breast cup for use in a breast pump system comprising: a cup of biocompatible material having a first cross-section and an opening at a first end, and a second cross-section and an opening at a second end, the wall thickness of the cup varying from the first end to the second end in a manner that causes a progressive collapse of the cup when a vacuum is drawn at the first end, and the second end of the cup is closed by a human breast and teat (see figures 4, 5 and entire reference). With regards to claim 37, see figure 4, 5, wherein the first cross-section is reference number 7, and the second cross-section is where reference letter A is shown.

5. Claims 22-32, 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Myers et al. (US Pub 2002/0193731).

Myers et al. discloses breast cup for use in a breast pump system comprising: a cup of biocompatible material having a first cross-section and an opening at a first end, and a second cross-section and an opening at a second end, the wall thickness of the cup varying from the first end to the second end in a manner that causes a progressive collapse of the cup when a vacuum is drawn

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at the first end, and the second end of the cup is closed by a human breast and teat (see figures 10A, 10B and paragraph [0060]).

Response to Arguments

6. Applicant's arguments filed 11/08/07 have been fully considered but they are not persuasive. The applicant argues functional language with respect to the prior art. According to MPEP section 2114, when dealing with apparatus claims, as long as the same structure is found then the apparatus would be capable of performing those functions. This is the interpretation the examiner is applying to the prior art. Therefore the examiner maintains his rejection as well as applies a new reference because of the newly added claim.
7. The examiner has withdrawn the rejection in view of Beer et al. (USPN 4,799,922) because a new reference is cited instead and the examiner doesn't want to have more than three 102 rejections cited in one office action.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew DeSanto
January 8, 2007



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